

§218.740

12 CFR Ch. II (1–14 Edition)

(d) *Accounts transferred to a broker or dealer or other unaffiliated entity.* Notwithstanding section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) and §218.721(a)(1) of this part, a bank operating under §218.721(a)(1) shall not be considered a broker for purposes of section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely because a *trust or fiduciary account* does not meet the chiefly compensated standard in §218.721(a)(1) if, within 3 months of the end of the year in which the account fails to meet such standard, the bank transfers the account or the securities held by or on behalf of the account to a broker or dealer registered under section 15 of the Act (15 U.S.C. 78o) or another entity that is not an affiliate of the bank and is not required to be registered as a broker or dealer.

(e) *De minimis exclusion.* A bank may, in determining its compliance with the chiefly compensated test in §218.721(a)(1), exclude a *trust or fiduciary account* if:

(1) The bank maintains records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account;

(2) The total number of accounts excluded by the bank under this paragraph (d) does not exceed the lesser of—

(i) 1 percent of the total number of trust or fiduciary accounts held by the bank, *provided that* if the number so obtained is less than 1 the amount shall be rounded up to 1; or

(ii) 500; and

(3) The bank did not rely on this paragraph (e) with respect to such account during the immediately preceding year.

[Reg. R. 72 FR 56554, Oct. 3, 2007, as amended at 73 FR 20780, Apr. 17, 2008]

§218.740 Defined terms relating to the sweep accounts exception from the definition of “broker.”

For purposes of section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)), the following terms shall have the meaning provided:

(a) *Deferred sales load* has the same meaning as in 17 CFR 270.6c-10.

(b) *Money market fund* means an open-end company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) that is regulated as a money market fund pursuant to 17 CFR 270.2a-7.

(c)(1) *No-load*, in the context of an investment company or the securities issued by an investment company, means, for securities of the class or series in which a bank effects transactions, that:

(i) That class or series is not subject to a sales load or a deferred sales load; and

(ii) Total charges against net assets of that class or series of the investment company’s securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually.

(2) For purposes of this definition, charges for the following will not be considered charges against net assets of a class or series of an investment company’s securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts:

(i) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares;

(ii) Aggregating and processing purchase and redemption orders for investment company shares;

(iii) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company;

(iv) Processing dividend payments for the investment company;

(v) Providing sub-accounting services to the investment company for shares held beneficially;

(vi) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares.

(d) *Open-end company* has the same meaning as in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-5(a)(1)).

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(e) *Sales load* has the same meaning as in section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(35)).

§218.741 Exemption for banks effecting transactions in money market funds.

(a) A bank is exempt from the definition of the term “broker” under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that it effects transactions on behalf of a customer in securities issued by a money market fund, provided that:

(1) The bank either

(i) Provides the customer, directly or indirectly, any other product or service, the provision of which would not, in and of itself, require the bank to register as a broker or dealer under section 15(a) of the Act (15 U.S.C. 78o(a)); or

(ii) Effects the transactions on behalf of another bank as part of a program for the investment or reinvestment of deposit funds of, or collected by, the other bank; and

(2)(i) The class or series of securities is no-load; or

(ii) If the class or series of securities is not no-load

(A) The bank or, if applicable, the other bank described in paragraph (a)(1)(B) of this section provides the customer, not later than at the time the customer authorizes the securities transactions, a prospectus for the securities; and

(B) The bank and, if applicable, the other bank described in paragraph (a)(1)(B) of this section do not characterize or refer to the class or series of securities as no-load.

(b) *Definitions.* For purposes of this section:

(1) *Money market fund* has the same meaning as in §218.740(b).

(2) *No-load* has the same meaning as in §218.740(c).

[Reg. R. 72 FR 56554, Oct. 3, 2007, as amended at 3 FR 20780, Apr. 17, 2008]

§218.760 Exemption from definition of “broker” for banks accepting orders to effect transactions in securities from or on behalf of custody accounts.

(a) *Employee benefit plan accounts and individual retirement accounts or similar accounts.* A bank is exempt from the definition of the term “broker” under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that, as part of its customary banking activities, the bank accepts orders to effect transactions in securities for an employee benefit plan account or an individual retirement account or similar account for which the bank acts as a custodian if:

(1) *Employee compensation restriction and additional conditions.* The bank complies with the employee compensation restrictions in paragraph (c) of this section and the other conditions in paragraph (d) of this section;

(2) *Advertisements.* Advertisements by or on behalf of the bank do not:

(i) Advertise that the bank accepts orders for securities transactions for employee benefit plan accounts or individual retirement accounts or similar accounts, except as part of advertising the other custodial or safekeeping services the bank provides to these accounts; or

(ii) Advertise that such accounts are securities brokerage accounts or that the bank’s safekeeping and custody services substitute for a securities brokerage account; and

(3) *Advertisements and sales literature for individual retirement or similar accounts.* Advertisements and sales literature issued by or on behalf of the bank do not describe the securities order-taking services provided by the bank to individual retirement accounts or similar accounts more prominently than the other aspects of the custody or safekeeping services provided by the bank to these accounts.

(b) *Accommodation trades for other custodial accounts.* A bank is exempt from the definition of the term “broker” under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that, as part of its customary banking activities, the bank accepts orders to effect